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Supreme Court, U.S.
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No. 02-54

In the Supreme Court of the United States

COLTEC INDUSTRIES, INC., PETITIONER

v.

WILLIAM P. HOBGOOD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in refusing to reinstate petitioner's constitutional challenge to the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, which petitioner had dismissed with prejudice as part of a voluntary settlement before this Court's decision in *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 280 F.3d 262. The December 4, 2000, opinion of the district court (Pet. App. 27a-35a) is reported at 184 F.R.D. 60. The July 20, 2000, opinion of the district court (Pet. App. 36a-42a) is unreported. The January 25, 1999, opinion of the district court (Pet. App. 43a-50a) is reported at 184 F.R.D. 60.

JURISDICTION

The judgment of the court of appeals was entered on February 1, 2002. A petition for rehearing was denied on April 3, 2002 (Pet. App. 61a-62a). The petition for a writ of certiorari was filed on July 2, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In enacting the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), 26 U.S.C. 9701 *et seq.*, Congress sought to ensure adequate funding for the provision of health-care benefits promised to retired coal miners and their dependents. The Coal Act established the United Mine Workers of America Combined Benefit Fund (Fund) to provide those benefits. The benefits are funded, in part, by premiums imposed on coal operators that signed certain collective bargaining agreements and employed an eligible beneficiary. See 26 U.S.C. 9701, 9704, 9706 (Pet. App. 63a-66a, 70a-80a).

Under the Coal Act, the Commissioner of Social Security (Commissioner) assigned each beneficiary to a signatory coal operator, to the extent that such operator (or a "related person") remained in business. The assignment was based on the length of a coal miner's employment by the signatory operator, the dates of employment, and the date(s) of the relevant collective bargaining agreement(s) signed by the operator. 26 U.S.C. 9706(a) (Pet. App. 76a). The operator (or "related person") must pay annual premiums to the Fund based on the amounts needed to provide benefits for its assigned coal miners and dependents. 26 U.S.C. 9704 (Pet. App. 70a-75a).

2. The Commissioner assigned a number of beneficiaries to petitioner, and the Fund assessed premiums against petitioner based on those assignments. Pet. App. 2a. After making the first two monthly premium payments to the Fund under protest, petitioner filed suit to enjoin the Fund from collecting any further premiums from it. *Id.* at 2a-3a. The original complaint alleged that the Coal Act was unconstitutional under the Fifth Amendment's Takings and Due Process

Clauses as applied to petitioner. The complaint noted that petitioner had withdrawn from the coal industry before 1974, when collective bargaining agreements in the industry began to include an explicit promise of lifetime health benefits. *Id.* at 3a. Petitioner subsequently filed a first amended complaint, alleging that some beneficiaries were erroneously assigned to it in violation of the Coal Act. *Ibid.*

The Fund counterclaimed for a declaration that the Coal Act was constitutional as applied to petitioner. Pet. App. 4a. The United States intervened to defend the constitutionality of the Coal Act. *Ibid.*

Petitioner and the Fund executed agreements under which petitioner agreed to establish an escrow account into which it would deposit all premiums due during the pendency of its preliminary injunction motion. Pet. App. 3a. In return, the Fund agreed to deem petitioner's payments into escrow as payments to the Fund and not to treat the failure to pay as a default. *Ibid.* The agreements provided that the escrow funds, plus interest, would be disbursed to the Fund if the preliminary injunction motion was denied or to petitioner if the motion was granted. *Ibid.* At petitioner's request, the district court subsequently dismissed petitioner's motion for a preliminary injunction. *Id.* at 60a.

3. Meanwhile, a number of federal courts of appeals, including the Third Circuit, considered the constitutionality of the Coal Act. See, *e.g.*, *Eastern Enterprises* v. *Chater*, 110 F.3d 150 (1st Cir. 1997), rev'd, 524 U.S. 498 (1998); *Holland* v. *Keenan Trucking Co.*, 102 F.3d 736 (4th Cir. 1996); *Lindsey Coal Mining Co.* v. *Chater*, 90 F.3d 688 (3d Cir. 1996); *In re Blue Diamond Coal Co.*, 79 F.3d 516 (6th Cir. 1996), cert. denied, 519 U.S. 1055 (1997); *Davon, Inc.* v. *Shalala*, 75 F.3d 1114 (7th Cir.), cert. denied, 519 U.S. 808 (1996); *In re*

Chateaugay Corp., 53 F.3d 478 (2d Cir.), cert. denied, 516 U.S. 913 (1995). In each instance, the courts of appeals held that the Coal Act was constitutional as applied to coal operators in positions substantially similar to that of petitioner. While other coal companies' constitutional challenges remained pending, petitioner initiated settlement negotiations with the Fund.

The parties entered into a Stipulation, which was approved by the district court. Pet. App. 5a-6a, 55a-58a. Under the terms of the Stipulation, petitioner agreed to file a second amended complaint containing a single claim—namely, that the Fund had miscalculated the amount of premiums charged to petitioner under the Coal Act. *Id.* at 56a. The Fund and the United States agreed not to oppose petitioner's untimely filing of such a complaint. *Id.* at 57a. Petitioner agreed that, after the second amended complaint was filed, it would dismiss *with prejudice* all previously filed counts of its original complaint and its first amended complaint. *Ibid.* The Stipulation also provided that petitioner would obtain the benefits, if any, of a favorable decision in *National Mining Ass'n* v. *Chater* (*NMA*), No. CV-96-N-1385-S, a case pending in the Northern District of Alabama on the one issue in petitioner's second amended complaint. Pet. App. 56a-57a. Petitioner reserved the right to litigate the issue if the outcome in *NMA* was unfavorable to the plaintiff coal companies. *Id.* at 57a.

Pursuant to the Stipulation, petitioner filed a second amended complaint, which alleged only that the Coal Act required the Fund to use a different method for calculating petitioner's premiums and that petitioner was entitled to a credit for the differential between that method and the method used by the Fund. Pet. App.

5a-6a. Petitioner then gave notice of its "voluntary dismissal, with prejudice," of all of the claims contained in its original and first amended complaints. *Id.* at 53a-54a. The dismissal was "so ordered" by the district court. *Id.* at 54a. The case was stayed pending the resolution of the *NMA* case. *Id.* at 51a-52a.

1. After the execution of the Stipulation and the voluntary dismissal with prejudice of petitioner's constitutional claims, this Court held that a coal company could not constitutionally be assigned beneficiaries under the Coal Act based solely on its participation in pre-1974 collective bargaining agreements. *Eastern Enterprises*, 524 U.S. at 522-537 (plurality opinion of O'Connor, J.); *id.* at 538-539 (Thomas, J., concurring); *id.* at 539-550 (Kennedy, J., concurring in judgment). In light of *Eastern Enterprises*, the Commissioner concluded that the assignments to petitioner were "void," thereby relieving petitioner of any future obligation to pay premiums to the Fund based on those assignments. Pet. App. 84a.

After *Eastern Enterprises*, petitioner filed three motions in the district court, seeking to revive the constitutional claims that it had previously dismissed with prejudice pursuant to the Stipulation. Pet. App. 6a. Petitioner moved for leave to file a third amended complaint to reassert those constitutional claims and to amend the remaining count to allege that its total premium amount should be zero. *Ibid.* Alternatively, petitioner moved under Rule 60(b) of the Federal Rules of Civil Procedure for relief from the dismissal of the constitutional claims. *Ibid.*

The district court denied the motions to revive the dismissed claims, concluding that *Eastern Enterprises* did not provide a basis for relieving petitioner of the consequences of its bargain. Pet. App. 48a, 50a. The

court also denied petitioner's subsequent motion for "limited reconsideration" based on the Commissioner's letter informing petitioner that its assignment were void in light of *Eastern Enterprises*. The court noted that the letter was not new evidence and that petitioner could not rely on the letter to reassert the claims that it had bargained away. *Id.* at 7a.

5. On May 7, 1999, the coal companies in the *NMA* case reached a settlement with the Fund, under which the Fund agreed to a reduction in those companies' Coal Act premiums. In accordance with the Stipulation, the Fund offered petitioner a premium adjustment on the same terms and sought release of the remaining premium payments held in escrow. Petitioner refused the offer. The Fund then filed a motion asking the district court to direct petitioner to disburse the premiums in escrow. Pet. App. 7a.

The district court determined that the Fund was entitled to the funds in escrow, less the premium differential provided under the *NMA* settlement. Pet. App. 40a. The court also determined, however, that petitioner had never set up the escrow account, despite petitioner's repeated false statements to the contrary. *Id.* at 40a-41a. Therefore, the court ordered petitioner to pay the Fund the amount that should have been in escrow reduced by the premium differential. *Id.* at 36a-42a.

The district court subsequently addressed the parties' remaining claims and issued a final judgment. Pet. App. 27a-35a. The court granted the Fund's motion to dismiss as moot its counterclaim for a declaratory judgment that the Coal Act was constitutional as applied to petitioner. *Id.* at 29a. The court also held that the Stipulation mandated that petitioner's second amended complaint be resolved in the same manner as

the *NMA* case so that petitioner was entitled to the same premium reduction that the *NMA* plaintiffs had received. *Id.* at 31a. At the same time, the court rejected petitioner's assertion that, under its second amended complaint, its liabilities should be reduced to zero. *Id.* at 32a-34a.

6. The court of appeals, after consolidating petitioner's appeals, affirmed the district court in all respects. The court of appeals explained that petitioner "made a binding agreement * * * when it signed the Agreement, the Escrow Agreement, and the Stipulation." Pet. App. 25a-26a.[1] Accordingly, the court of appeals found "no basis in the Supreme Court's ruling in *Eastern* to allow [petitioner] to back out of its agreements." *Id.* at 26a.

First, the court of appeals determined that the "plain language" of the Stipulation limited petitioner's remaining cause of action to one seeking the premium differential at issue in the *NMA* case. Pet. App. 11a. Because petitioner explicitly agreed in the Stipulation to dismiss with prejudice its other causes of action, which included its constitutional challenges to the Coal Act and its statutory challenges to its assignments, the court of appeals held that petitioner "forfeit[ed] these avenues of contesting its underlying liability." *Ibid.*

Second, the court of appeals affirmed the denial of petitioner's motion under Rule 60(b) for relief from the dismissal with prejudice of the claims in its original and first amended complaints. The court of appeals explained that Rule 60(b)(5) authorizes relief only from

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[1] The Agreement and the Escrow Agreement were executed contemporaneously by the parties in the early stages of the case and related to petitioner's obligation to establish an escrow account for the payment of its Coal Act premiums. See Pet. App. 3a.

judgments that are "prospective," and that "[c]ourts have generally held that dismissals with prejudice are not prospective within the meaning of [the] Rule." Pet. App. 13a-14a (collecting cases). The court of appeals held that the judgment was not "prospective" for purposes of Rule 60(b)(5) because of its collateral estoppel effect, observing that, "[i]f this were enough to satisfy Rule 60(b)(5)'s threshold requirement, then the Rule's requirement of 'prospective application' would be meaningless." *Ibid.* In addition, the court of appeals held that the district court had not abused its discretion in weighing the equitable factors that could justify relief under Rule 60(b)(6), noting that the district court correctly "focused on the principal issue of whether [petitioner] should be excused from the effects of a deal it voluntarily made." *Id.* at 18a.

ARGUMENT

The decision of the court of appeals is correct, does not conflict with any decision of this Court or another court of appeals, and turns on the interpretation of agreements that are unique to this case. This Court's review is, therefore, not warranted.

1. Petitioner initially contends (Pet. 6) that "the lower courts violated the Constitution and this Court's decision in *Eastern Enterprises*" by imposing Coal Act liability on a coal company that is similarly situated to the coal company in that case. That argument misunderstands the basis for the lower courts' decisions. Those courts did not impose liability on petitioner because the Coal Act required it. Instead, the courts enforced a bargain that petitioner voluntarily made.

That bargain gave petitioner valuable rights. It allowed petitioner to assert a cause of action for a premium adjustment that would otherwise have been

untimely. The bargain also gave petitioner (but not respondents) the benefit of any favorable outcome in a parallel case. In exchange for that valuable consideration, petitioner agreed to make certain concessions, including its dismissal "with prejudice" of its constitutional challenges to the Coal Act and its claim that certain assignments violated the Act. Pet. App. 53a. Petitioner, which has been represented by counsel throughout this case, does not and cannot allege any coercion or other impropriety in the process of obtaining the settlement.

Under the clear terms of the settlement, petitioner cannot revive its constitutional claims. The settlement does not state that it would become void if this Court were to hold the Coal Act unconstitutional as applied to coal companies such as petitioner. Petitioner could have insisted that the settlement contain such a provision, but petitioner did not do so. As this Court has held, a party that chooses not to pursue its claims "cannot be relieved of such a choice because hindsight seems to indicate to him that his decision * * * was probably wrong." *Ackermann* v. *United States*, 340 U.S. 193, 198 (1950).

This Court's decision in *Eastern Enterprises* thus does not, as petitioner suggests, address the situation presented by this case. The coal company in *Eastern Enterprises*, unlike petitioner here, did not enter into a settlement that provided for the dismissal of certain claims with prejudice. As the court of appeals recognized, the settlement into which petitioner entered, not *Eastern Enterprises*, dictates the outcome of petitioner's constitutional challenge. See Pet. App. 25a ("The real issue is whether the Stipulation, in conjunction with the Agreement, which was 'so ordered,' authorizes the judgment imposed by the court.").

2. Petitioner further contends (Pet. 8-17) that the lower courts' decisions conflict with the Coal Act itself, and specifically with the Coal Act's vesting in the Commissioner of the authority to assign beneficiaries to signatory coal companies. The lower courts, however, were not assigning beneficiaries under the Coal Act, but were simply enforcing a voluntary settlement among the parties. Nothing in the Coal Act prevents litigants from entering into such settlements or prevents courts from enforcing them.

3. The petition does not specifically challenge the lower courts' determinations that petitioner was not entitled to relief from judgment under Rule 60(b)(5) or (6) of the Federal Rules of Civil Procedure. Yet, such relief would have been a prerequisite to the requested reinstatement of petitioner's constitutional challenge to the Coal Act. The lower courts' rulings with respect to Rule 60(b) are correct and consistent with the decisions of other circuits.

Federal Rule 60(b)(5) permits a court to grant relief from judgment if, *inter alia*, "it is no longer equitable that the judgment should have prospective application." It is well settled that a dismissal with prejudice does not have the sort of "prospective application" addressed by Rule 60(b)(5). See, *e.g.*, *Twelve John Does* v. *District of Columbia*, 841 F.2d 1133, 1139 (D.C. Cir. 1988) (observing that "it is difficult to see how an unconditional dismissal could ever have prospective application within the meaning of Rule 60(b)(5)" under the analysis of this Court's pre-Federal Rules decisions in *United States* v. *Swift & Co.*, 286 U.S. 106 (1932), and *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855)); Pet. App. 14a (collecting cases). The lower courts correctly applied that principle to deny

petitioner's request for relief under Rule 60(b)(5). The petition does not challenge that conclusion.[2]

Federal Rule 60(b)(6) permits a court to grant relief from judgment for reasons not specified in other clauses of Rule 60(b). As this Court has made clear, when a party does not have a basis for seeking relief from a judgment because of fraud, mistake, or one of the other grounds specifically enumerated in Rule 60(b), a court may grant relief under Rule 60(b)(6) only in "extraordinary circumstances." *Liljeberg* v. *Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988). An intervening judicial decision—even a decision of this Court regarding the constitutionality of a statute—does not alone constitute such "extraordinary circumstances." See *Agostini* v. *Felton*, 521 U.S. 203, 239 (1997); Pet. App. 17a (collecting cases); *id.* at 16a-22a.[3] The lower courts correctly applied that principle to deny petitioner's request for Rule 60(b)(6) relief. The petition does not challenge that conclusion, either.

As the court of appeals recognized, the denial of petitioner's motion for Rule 60(b) relief "is in line with the decisions of the other courts that denied relief sought by companies which settled or paid premiums pursuant to final judgments before *Eastern*." Pet. App. 22a. Indeed, even when coal companies fully litigated their constitutional claims before *Eastern Enterprises* —instead of settling those claims for valuable consi-

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[2] Petitioner is not required to pay Coal Act assessments for any period subsequent to this Court's decision in *Eastern Enterprises*. See Pet. App. 13a n.12, 84a.

[3] Apparently due to a printing error, the last paragraph of footnote 15 of the court of appeals' opinion has been removed from the footnote and inserted in the text of the opinion as the first paragraph on page 18a of the Appendix.

deration—the courts have consistently denied relief from judgment under Rule 60(b). See *Blue Diamond Coal Co.* v. *Trustees of UMWA Combined Benefit Fund*, 249 F.3d 519, 523-529 (6th Cir.), cert. denied, 122 S. Ct. 643 (2001); Pet. App. 22a-24a (collecting cases).

4. Finally, the lower courts' decisions in this case turn on the interpretation of the unique agreements negotiated among the parties. Accordingly, the case does not present any question of general significance that warrants further review.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4] The petition does not present the question on which the Court granted certiorari in *Barnhart* v. *Peabody Coal Co.*, No. 01-705, and *Holland* v. *Bellaire Corp.*, No. 01-715, which are scheduled for argument on October 8, 2002.